



6560-50-P

## **ENVIRONMENTAL PROTECTION AGENCY**

### **40 CFR Part 52**

**[EPA-R09-OAR- 2016-0702; FRL-9957-95-Region 9]**

#### **Approval of Arizona Air Plan Revisions, Arizona Department of Environmental Quality and Pinal County Air Quality Control District**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is proposing to approve revisions to the Arizona State Implementation Plan (SIP). These revisions include a state statute and certain state rules that govern air pollution sources under the Arizona Department of Environmental Quality (ADEQ) and the Pinal County Air Quality Control District (PACQCD). These revisions concern emissions of particulate matter (PM) from construction sites, agricultural activity and other fugitive dust sources. We are proposing to approve local rules to regulate these emission sources under the Clean Air Act (CAA or the Act). We are taking comments on this proposal and plan to follow with a final action.

**DATES:** Any comments must arrive by **[Insert date 30 days after the date of publication in the Federal Register]**.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA-R09-OAR-2016-0702 at <http://www.regulations.gov>, or via email to [Steckel.Andrew@epa.gov](mailto:Steckel.Andrew@epa.gov). For comments submitted at Regulations.gov, follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from Regulations.gov. For either manner of

submission, the EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (i.e. on the web, cloud, or other file sharing system). For additional submission methods, please contact the person identified in the “**FOR FURTHER INFORMATION CONTACT**” section. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <http://www2.epa.gov/dockets/commenting-epa-dockets>.

**FOR FURTHER INFORMATION CONTACT:** Christine Vineyard, EPA Region IX, (415) 947-4125, [vineyard.christine@epa.gov](mailto:vineyard.christine@epa.gov).

**SUPPLEMENTARY INFORMATION:** Throughout this document, “we,” “us” and “our” refer to the EPA.

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## I. The State's Submittal

A. *What statute and rules did the State submit?*

Table 1 lists the statute and rules addressed by this proposal with the dates that they were adopted by the state or local air agency and submitted by the ADEQ.

TABLE 1 - SUBMITTED STATUTE AND RULES

<b>Local Agency</b>	<b>Rule #</b>	<b>Rule Title</b>	<b>Adopted</b>	<b>Submitted</b>
PCAQCD	Chapter 4- Article 1	Fugitive Dust	10/28/15	12/21/15
PCAQCD	Chapter 4 – Article 3	Construction Sites – Fugitive Dust	10/28/15	12/21/15
<b>Arizona Revised Statutes (ARS)</b>	<b>Statute #</b>	<b>Statute Title</b>	<b>Effective Date</b>	<b>Submitted</b>
ARS	§49-424	Duties of Department	4/18/14	12/21/15
<b>Arizona Administrative Code (AAC) Rule Number</b>	<b>AAC #</b>	<b>AAC Title</b>	<b>Amended/ Effective Date</b>	<b>Submitted</b>
AAC	R18-2-210	Attainment, Nonattainment, and Unclassifiable Area Designations	07/01/14	12/21/15
AAC	R18-2-610	Definitions for R18-2-610.01, R18-2-610.02, and R18-2- 610.03	07/02/15	12/21/15
AAC	R18-2-610.03	Agricultural PM General Permit for Crop Operations; Pinal County PM Nonattainment Area	07/02/15	12/21/15

AAC	R18-2-612	Definitions for R18-2-612.01	07/02/15	12/21/15
AAC	R18-2-612.01	Agricultural PM General Permit for Irrigation Districts; PM Nonattainment Areas Designated After June 1, 2009	07/02/15	12/21/15
AAC	Appendix 2	Test Methods and Protocols	07/02/15	12/21/15

On March 21, 2016, the EPA determined that the submitted revisions from ADEQ and PCAQCD listed in Table 1 met the completeness criteria in 40 CFR Part 51 Appendix V, which must be met before formal EPA review.

*B. Are there other versions of the statute and rules?*

There are no previous versions of PCAQCD Chapter 4, Articles 1 and 3 in the SIP. Table 2 lists versions of the statute and rules EPA has previously approved into the SIP.

TABLE 2 – SIP-APPROVED RULES

<b>ARS</b>	<b>Title</b>	<b>Existing SIP-approved rule superseded by this action</b>	<b>Previous Approval</b>
§49-424	Duties of Department	49-424 (2011) Duties of Department	77 FR 66398 11/05/12
<b>AAC</b>	<b>Title</b>	<b>Existing SIP superseded by this action</b>	<b>Previous Approval</b>
R18-2-210	Attainment, Nonattainment, and Unclassifiable Area Designations	Attainment, Nonattainment, and Unclassifiable Area Designations	79 FR 56656 09/23/14
Appendix 2	Test Methods and Protocols	Test Methods and Protocols	79 FR 56655 09/23/15

In addition, we note that SIP-approved rule R18-2-610, “Definitions for R18-2-611,” has the same AAC number as new rule R18-2-610, “Definitions for R18-2-610.01 R18-2-610.02, and R18-2-610.03,” but is not superseded by the new rule. *See* 66 FR 51869 (October 11, 2001).

Both versions of R18-2-610 will be in the SIP, but can be differentiated by their different titles and dates.

C. *What is the purpose of the submitted rule and statute revisions?*

Particulate matter, including PM equal to or less than 2.5 microns in diameter (PM<sub>2.5</sub>) and PM equal to or less than 10 microns in diameter (PM<sub>10</sub>), contributes to effects that are harmful to human health and the environment, including premature mortality, aggravation of respiratory and cardiovascular disease, decreased lung function, visibility impairment, and damage to vegetation and ecosystems. Section 110(a) of the CAA requires states to submit regulations that control PM emissions.

PCAQCD Chapter 4, Article 1 – Fugitive Dust

- New rule applies to open areas/vacant lots, unpaved roads, unpaved lots and paved public roadways.
- Establishes a 20 percent opacity limit.
- Requires no trespassing signs, physical barriers or other effective control measures upon evidence of trespass.
- Limits silt content on unpaved lots and roads to eight percent and six percent respectively.

PCAQCD Chapter 4, Article 3 – Construction Sites - Fugitive Dust

- New rule designed to regulate PM<sub>10</sub> emissions attributed to construction activities under both stagnation and windy conditions.
- Limits opacity to 20 percent.

ARS § 49-424 – Duties of Department

- Revised rule extends the requirement to develop and disseminate air quality dust forecasts to the Maricopa County PM<sub>10</sub> maintenance area and any other PM<sub>10</sub> nonattainment or maintenance areas designated on or after December 31, 2011.

#### AAC R18-2-210 - Attainment, Nonattainment, and Unclassifiable Area Designations

- Revised rule reflects updated 40 CFR 81.303 as amended July 1, 2014.

#### AAC R18-2-610 – Definitions for R18-2-610.01, R18-2-610.02, and R18-2-610.03

- New rule provides definitions for commercial farms general permit rule and applies to general permit rules in other specified nonattainment areas.

#### AAC R18-2-610.03 – Agricultural PM General Permit for Crop Operations; Pinal County PM Attainment Area

- New menu-based rule requires a general permit for commercial farms in the Pinal County PM Nonattainment Area.
- Requires implementation of at least one (best management practice) BMP in the following five categories: tillage, ground operations and harvest, noncropland, commercial farm roads, and cropland. Beginning in calendar year 2017, and no more than once every subsequent three years, requires facility response to an ADEQ survey on BMP implementation.

#### AAC R18-2-612 – Definitions for R18-2-612.01

- New rule provides definitions for R18-2-612.01.

#### AAC R18-2-612.01 – Agricultural PM General Permit for Irrigation Districts; PM Nonattainment Areas Designated after June 1, 2009

- New menu-based rule requires a general permit for irrigation districts in nonattainment

areas designated after June 1, 2009.

- Requires implementation of at least one BMP in the following three categories: unpaved operation and maintenance roads, canals, and unpaved utility access roads.
- Beginning in calendar year 2017, and no more than once every subsequent three years, requires irrigation district response to an ADEQ survey on BMP implementation.

#### AAC Appendix 2 - Test Methods and Protocol

- Revised rule adds section L: 40 CFR 51.128 Appendix A (1)(B) and section M: Silt Content Test Method.

The EPA's technical support documents (TSDs) have more information about these rules.

## II. The EPA's Evaluation and Action

### A. *How is the EPA evaluating the statute and rules?*

SIP rules must be enforceable (see CAA section 110(a)(2)), must not interfere with applicable requirements concerning attainment and reasonable further progress or other CAA requirements (see CAA section 110(l)), and are limited in how they can modify certain SIP control requirements in nonattainment areas (see CAA section 193).

In addition, generally, SIP rules must implement Reasonably Available Control Measures (RACM), including Reasonably Available Control Technology (RACT), in moderate PM<sub>2.5</sub>/PM<sub>10</sub> nonattainment areas (see CAA sections 172(c)(1) and 189(a)(1)(C)). The PCAQCD regulates a PM<sub>10</sub> nonattainment area classified as moderate for the 1987 24-hour PM<sub>10</sub> National Ambient Air Quality Standard (NAAQS)(40 CFR 81. 303).<sup>1</sup> A RACM evaluation is generally

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<sup>1</sup> The 1997 PM<sub>10</sub> 24-hour National Ambient Air Quality Standard (primary and secondary) is 150 micrograms per cubic meter. See <https://www.epa.gov/criteria-air-pollutants/naaqs-table>.

performed in context of a broader plan, so we are not proposing to determine whether ADEQ has demonstrated RACM for the Pinal area as part of this notice.

Guidance and policy documents that we use to evaluate enforceability, revision/relaxation and rule stringency requirements for the applicable criteria pollutants include the following:

1. "State Implementation Plans; General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990," 57 FR 13498 (April 16, 1992); 57 FR 18070 (April 28, 1992).
2. "Issues Relating to VOC Regulation Cutpoints, Deficiencies, and Deviations," EPA, May 25, 1988 (the Bluebook, revised January 11, 1990).
3. "Guidance Document for Correcting Common VOC & Other Rule Deficiencies," EPA Region 9, August 21, 2001 (the Little Bluebook).
4. "PM-10 Guideline Document," EPA 452/R-93-008, April 1993.
5. "Fugitive Dust Background Document and Technical Information Document for Best Available Control Measures," EPA 450/2-92-004, September 1992.

B. *Do the rules and statute meet the evaluation criteria?*

We believe these rules and statute are consistent with CAA requirements and relevant guidance and fulfill the evaluation criteria. The statute and rules are clear and contain adequate testing, recordkeeping and reporting requirements to be sufficiently enforceable. The statute and rules strengthen effective requirements (e.g., by strengthening/adding general permit rules and BMPs for agricultural operations) and are consistent with CAA section 193. The statute and rules generally impose RACT-level requirements (e.g., the revisions limit silt content on unpaved lots



and roads to eight percent and six percent respectively) for the affected categories.

The TSDs have more information on our evaluation.

C. *EPA recommendations to further improve the rules*

The TSDs describe additional rule revisions that we recommend for the next time the state and local agency modifies the rules.

D. *Public comment and proposed action*

As authorized in section 110(k)(3) of the Act, the EPA proposes to fully approve the submitted rules and statute because we believe they fulfill all relevant requirements. We will accept comments from the public on this proposal until **[Insert date 30 days after date of publication in the Federal Register]**. Unless we receive convincing new information during the comment period, we intend to publish a final approval action that will incorporate these rules and statute into the federally-enforceable SIP.

### **III. Incorporation by Reference**

In this rule, the EPA is proposing to include in a final EPA rule regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, the EPA is proposing to incorporate by reference the PCAQCD/ADEQ rules/statute as described in Table 1 of this notice. The EPA has made, and will continue to make, these documents available electronically through [www.regulations.gov](http://www.regulations.gov) and in hard copy at the appropriate EPA office (see the ADDRESSES section of this preamble for more information).

### **IV. Statutory and Executive Order Reviews**

Under the Clean Air Act, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable federal regulations. 42 U.S.C. 7410(k); 40

CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. Accordingly, this proposed action merely proposes to approve state law as meeting federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this proposed action:

- is not a "significant regulatory action" subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 et seq.);
- is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.);
- does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);

- is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and
- does not provide the EPA with the discretionary authority to address disproportionate human health or environmental effects with practical, appropriate, and legally permissible methods under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where the EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference,  
Intergovernmental relations, Particulate matter, Reporting and recordkeeping requirements.

**AUTHORITY:** 42 U.S.C. 7401 *et seq.*

Dated: December 20, 2016.

Alexis Strauss,  
Acting Regional Administrator,  
Region IX.

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